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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,396	01/23/2004	Terry Keith Bryant	1023.8009	8942

44538 7590 09/14/2010

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
3769	

NOTIFICATION DATE	DELIVERY MODE
09/14/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/767,396	BRYANT, TERRY KEITH	
	Examiner	Art Unit	
	SHIRLEY JIAN	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *January 8, 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-9,11-17,19-28,30 and 38-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-9,11-17,19-28,30 and 38-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement

The Examiner acknowledges the amendment filed on January 8, 2010 wherein claims 3-9, 11-17, 19-28, 30 and 38-40 are pending.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3-9, 11-17, 19-28, 30, 38-40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 11/833,787. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application recite a similar invention. Both sets of claims recite a medical apparatus and an associated timer with audio/speaker capabilities to audibly assist a user of the medical apparatus to eliminate the presence of a live ancillary medical assistant.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the

following is required: claim 12 limitation “a spaced apart continuous basis”. Appropriate correction is required.

Claim Objection

Claims 11 and 19 are objected to because of the following informalities: the limitations “Signal Output Unit” and “Signal Output unit” contain random and inconsistent capitalization. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 limitation "a spaced apart continuous basis" is indefinite because it lacks proper antecedent basis in the specification, and the terminology is regarded as an oxymoron because the Examiner cannot decipher what is simultaneously considered spaced apart and continuous. The Examiner suggests removing said terminology.

Claim 12 line 5 and claim 13 line 1 recite the limitation "*the* required procedure ". There is insufficient antecedent basis for these limitations in the claims.

Note to Applicant Regarding Claim Interpretation

The words "in order to" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then the prior art properly rejects the broadest reasonable interpretation of the claim. See, e.g., In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-9, 11-17, 19-28, 30 and 38-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al. US Patent No. 6,790,178 B1.

In regards to claims 3, 17, and 22, Mault et al. teaches a physiological monitor comprised of a computing device, e.g. PDA, and a plug-in type biological sensor, e.g. metabolism, weight body temperature etc. (col.4, ll.56). The plug-in type sensors is a separate entity with its own housing to form an integral unit with the PDA; or may be inserted into an accessory slot into the PDA such that it is within a common housing as the PDA (col.4, ll.41-56 note: the Examiner

interprets the PDA as a self-contained electronic assembly). Mault's PDA unit is a typical computing device equipped with processor, memory, clock, audio/visual display, power supply and software programs for various applications (see col.5, ll.19-56). Specifically, the PDA has "software programs to prompt and remind a user to make use of the various physiological monitor modules as part of an overall health management system "(col.6, ll.45-61, it is the Examiner's position that scheduled reminder prompts are sufficient to reject a timer unit). Additionally, during use of the monitor modules, the PDA utilizes voice recognition/generation capabilities to generate voice commands "to instruct the user on proper use of the monitor module and/or to provide feedback and results." (col.5, ll.4-18) Although Mault only teaches a PDA speaker/headphone jack specific to the EKG/heart sound module (see col.13, ll.57-64, col.14, ll.43-50 and Fig.11); however, it is inherent that a PDA with voice generation is at least equipped with a speaker/headphone jack such that it is able to provide voice commands to the user.

In regards to claims 4-8, 14-16, 19-21 and 25-27, voice commands are generated to instruct the user on proper use of the monitor module and/or to provide feedback and results (col.5, ll.4-15). In the health/diet management embodiment, the PDA carries health management software to enable the user to set up a variety of fitness plans including personal goals and targets (this is interpreted as the level setting unit), to track the user's adherence to the plans, and to provide feedbacks and recommendations (col.6, ll.62-col.12). In the body temperature monitoring embodiment, the PDA is able to determine a user's temperature in relation to a real-time clock, and provide warnings and treatment recommendation when the monitored temperature exceeds a pre-determined limit (col.17, ll.24-32, ll.45-55). In the EKG/heart sound

monitoring embodiment, the PDA is equipped with additional analog and digital filtering circuitry to process the patient's heart sounds (col.14, ll.43-67).

In regards to claims 9-13, 23-24 and 38-40, during health management, the patient is prompted periodically by the PDA to make use of the various physiological monitor modules as part of an overall health management (col.6, ll.40-61). For example, when a user has specified that he/she will walk or run a certain number of times for a certain distance each week, the PDA's software is able to prompt the user to remind them that, according to the schedule, they should use a pedometer module to monitor the specified activity (col.6, ll.62-12). The PDA stores the measured data when the user chooses to initiate the specified activity, or the PDA may allow the user to postpone the measurement until a more appropriate time (col.6, ll.45-61). Although Mault et al. does not distinctly disclosed that the PDA's prompts contain verbal messaged, it does teach that the PDA and various monitor modules have voice generation capabilities for generating voice commands to instruct and provide audio feedback to the user (see col.5, ll.4-15, col.7, ll.59-col.8, ll.22). It is the Examiner's position that this is sufficient to reject verbal messages.

In regards to claims 28 and 30, the PDA communicates with a remote comminuting device such that patient data can be further transmitted to the remote location for storage or analysis (col.7, ll.12-26).

Conclusion

The Applicant is advised to review the applied prior art reference in its entirety prior to submitting a response; and the Examiner invites the Applicant to schedule a telephonic interview to discuss the claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Abita et al. US Patent No. 5,838,238 alarm system for blind and visually impaired individuals;
- Mault et al. US Pub No. 2003/0226695 A1- method of assisting a person to achieve a weight control goal including a timer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY JIAN whose telephone number is (571)270-7374. The examiner can normally be reached on Monday-Friday 10:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hank Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SHIRLEY JIAN/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769

September 7, 2010